THE STATE OF NEW HAMPSHIRE

SUPREME COURT

In Case No. 2006-0699, Janice E. Jassmond & a. v. Arleigh Greene, the court on July 9, 2007, issued the following order:

The plaintiffs, Janice E. Jassmond, William Jassmond, and Stephen Marston, appeal from an order of the superior court rendered after a bench trial finding that the defendant's predecessor did not waive its right to collect late fees and default interest under the terms of certain promissory notes. They argue that the trial court erred by not ruling upon their claim of estoppel, the theory they articulated in their request for findings of fact and rulings of law, and upon which they offered evidence. We vacate and remand.

The trial court, when presiding over a bench trial and when requested by one of the parties, is obliged to render such written findings of fact and rulings of law as are sufficient to support its decision and to provide for adequate appellate review. See Magrauth v. Magrauth, 136 N.H. 757, 760 (1993); RSA 490:15 (1997). This includes the obligation to rule upon a party's properly presented claims for relief. See Geiss v. Bourassa, 140 N.H. 629, 633 (1996).

In this case, the plaintiffs, who held mortgages junior to mortgages held by the defendant, brought a petition for declaratory relief claiming an adverse equitable interest in a portion of the proceeds from the foreclosure of the property. In support of their petition, they requested detailed findings of fact and rulings of law concerning whether the defendant was equitably estopped from enforcing the default interest and penalty provisions of its notes.

At trial, the plaintiffs offered evidence that they were induced to refrain from foreclosure at a significantly earlier date, and to renegotiate with the mortgagor, by the assertion of the defendant's predecessor as to the specific amount it was entitled to take from a foreclosure, an amount which did not include penalties or a substantially higher default interest rate. The trial court, however, characterized the "argument [as being] that the [defendant's predecessor] implicitly waived its right to collect late fees and default interest," and found that the defendant's predecessor never agreed to such a waiver. The trial court neither addressed estoppel in its order nor specifically ruled upon the requested findings and rulings, and denied, without a narrative order, the plaintiffs' motion for reconsideration in which they asserted that the trial court had failed to address estoppel, the basis of their claim.

"[A]lthough cases have often failed to distinguish between waiver and estoppel, there is a substantial difference between them." Fitch Company v. Insurance Company, 99 N.H. 1, 3 (1954) (citation omitted). The doctrine of waiver, which concerns the voluntary abandonment of a known right, is unilateral in nature, and requires a finding of intent on the part of the waiving

party. See Therrien v. Maryland Cas. Co., 97 N.H. 180, 181-82 (1951). By contrast, equitable estoppel, which "forbid[s] one to speak against his own act, representations or commitments communicated to another who reasonably relies upon them to his injury," Cadle Co. v. Bourgeois, 149 N.H. 410, 418 (2003), focuses upon the conduct of both parties, and requires no finding of intent on the part of the party to be estopped, see Therrien, 97 N.H. at 182.

We conclude, therefore, that the trial court's order was insufficient to adjudicate the plaintiffs' estoppel claim. Inasmuch as "[a] broad view of the plaintiffs' petition and requests for findings and rulings does show that they properly pleaded" their estoppel claim, they were entitled to have the trial court rule upon it. Geiss, 140 N.H. at 633.

We reject the defendant's contention that the plaintiffs, as a matter of law, failed to prove estoppel. To the contrary, the evidence, summarized above, viewed in the light most favorable to the plaintiffs, would sustain a finding of estoppel. See Cadle Co., 149 N.H. at 418 (defining elements of estoppel). To the extent the defendant claims the plaintiffs' reliance was not reasonable because they did not discover on their own the default interest and penalty terms, we note that there is evidence that the relevant promissory notes, to which the plaintiffs were not party, were not public documents. Moreover, the plaintiffs submitted evidence that while the defendant's predecessor, to persuade them to renegotiate, provided them with documents detailing what it would be entitled to receive from a foreclosure, it did not provide them the notes themselves. We also observe that the defendant did not dispute the plaintiffs' contention that the defendant was not a holder in due course. See RSA 382-A:3-302 (1994).

Nor do we accept the plaintiffs' invitation to rule upon estoppel as a matter of law. While the record would support a finding of estoppel, it does not compel such a finding. See Chester Rod & Gun Club v. Town of Chester, 152 N.H. 577, 583 (2005). Accordingly, we vacate and remand for findings and rulings upon the plaintiffs' estoppel claim, and for such further proceedings, if any, that the trial court deems necessary.

Vacated and remanded.

DALIANIS, GALWAY and HICKS, JJ., concurred.

Eileen Fox,
Clerk